Mr. Thanu Pillai.—I beg to move that the Bill as now amended be read again on a future day of which notice shall be given.

The motion was put and agreed to.

CIVIL COURTS REGULATION AMENDMENT BILL.

Mr. Thanu Pillai.—I beg to move that the Civil Courts Bill, as amended by the Select Committee, be taken into consideration.

The Bill, as the Council will have observed, has been materially modified by the Select Committee. In the Bill as introduced, the provision relating to the enhanced ordinary jurisdiction of Munsiffs was permissive, as in the case of the small cause jurisdiction. But after careful consideration, it was found that a varying ordinary jurisdiction would lead to much practical inconvenience and the Select Committee, therefore, amended the provision so as at once to raise the ordinary jurisdiction of all Munsiffs from Rs. 500 to Rs. 1,000. The Select Committee, however, thought that it would not be expedient to deprive the parties of the right which they now possess of getting a decision from the High Court in all cases the amount or value of the subject-matter of which exceeded Rs. 500, and added a section accordingly.

Among the papers circulated, I find one from Mr. Mathew B. A. & B. L., Vakil, Quilon, strongly objecting to the above provision. His reasons are (1) that "this is is a novel departure in the principles of legislation," (2) that "it is a slur on the honesty and intelligence of the Zillah Judges," and (3) that "it gives expenses and inconvenience to the public". Now, novelty, by which, I believe, is meant something new and not old, is not an objectionable feature in a legislative measure. But, I must confess, that the second ground of objection is quite *novel*. Mr. Mathew cannot but be aware that in the Madras Presidency appeals from the decrees and orders of the Subordinate Judges lie to the District Court except when the amount or value of the subject-matter of the suit exceeds Rs. 5,000, in which case the appeal lies to the High Court. Is this a slur on the intelligence and honesty of the District Judges in British India? His third ground of objection deserves consideration. But I should observe that now, all the appeals above Rs. 500 lie to the High Court, and the new provision is no novel departure so far as expense and inconvenience to the public are concerned.

It should be borne in mind that of the total litigation in Travancore, a little over $2\frac{1}{2}$ per cent only represent suits of which the amount or value exceeds Rs. 500. Of the latter, about 60 per cent relate to suits between Rs. 500 and Rs. 1,000 in value. Any one acquainted with the economic condition of the people must admit that a sum of between Rs. 500 and Rs. 1,000 represents the aggregate property of a considerable proportion of the litigant public, and a wrong decision in a suit of such value means the ruin of families. Would it be proper to deprive the people of the right which they have hitherto enjoyed of getting a decision from the highest tribunal in the land? It may, of course, be said that a second appeal to the High Court is allowed in cases where the Zillah Judge differs from the Munsiff in his finding. But the statistics which I have been able to collect show that in 60 per cent of the cases, the findings of the Munsiffs and Zillah Judges are concurrent. Even in regard to the remaining 40 per cent, the party will have to incur the expense of two appeals to get a decision from the highest tribunal, and, I am sure, the Council will agree as to the inexpediency of multiplying appeals.

With these observations, I move that the Bill be taken into consideration.

The motion was put and agreed to.

Mr. Poonen.—I beg to propose the amendment of which I have given notice. Ordinarily, an appeal from the decree of a court must lie to the court immediately superior to it. According to the proposed section 7, a suitor, the amount or value of the subject-matter of whose suit is above Rs. 500 and below Rs. 1,000, has not the right to appeal to the Zillah Court, and hence he does not get the benefit of the decisions of three courts. But a suitor, the amount or value of the subject-matter of whose suit is Rs. 500 or below that sum, gets the benefit of the decisions of three courts viz., the Munsiff's Court, the Zillah Court, and the High Court. This appears to be

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hard upon one class of suitors. Under the Civil Procedure Code, when there is a concurrent finding on questions of fact by the Munsiff's Court and the Zillah Court, there is no appeal to the High Court, except when "the decision is contrary to some specified law or usage having the force of law and except when there is a substantial error or defect in the investigation of the case or in the procedure as prescribed by the Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits." The procedure should be the same in the case of appeals against all decrees of Munsiffs' Courts in regular suits. I see no objection in leaving suits, the amount or value of the subject-matter of which exceeds Rs. 500 and is below Rs. 1,000, in the same position as suits below Rs. 500. In such cases also, let the appeals lie to the Zillah Court, and if the findings on questions of fact are not concurrent, the party will have a right to appeal to the High Court. I would point out to this Council that the Zillah Courts are in a better position to adjudicate on questions of fact than the High Court on account of their better local knowledge of persons and things. In cases of concurrent findings on questions of fact by two courts, there would be, in many cases, points of law or of usage having the force of law on which the interference of the High Court will be sought for. We should not be opposed to multiplication of appeals, for the litigant public of this country will not be satisfied unless their cases pass through all the courts before whom their grievances may be poured forth. It would be, I think, in the interests of justice, if there be the means of getting all the intricate points in a suit scrutinised by as many courts as possible. In a financial point of view, the Government only gains by multiplication of appeals. Parties in distant parts of this State are now put to great inconvenience by reason of their having to come all the way to Trivandrum to prefer appeals to the High Court, and it would be well if a portion of such appeals could be allowed to be laid before the Zillah Courts which are at reasonable distances from all suitors in a district. If in appeal the findings on questions of fact are concurrent, then there is a finality of litigation, and suitors have no occasion to come to the High Court. I would, for the foregoing reasons, recommend that section 7 be omitted.

Mr. Nagam Aiya.—I beg to second the amendment.

I should like all the appeals, whether above or below Rs. 500, to go up in the usual manner to the District Court and thence to the High Court. I would even go so far, in the interests of the suitor-population, as to add a Proviso that in the case of these suits above Rs. 500, the High Court may hear second appeals on *facts* also, even though there is a concurrent finding by the two courts below. This would be a real boon. I think that the scrutiny which a case receives from the District Court on first appeal will be a great advantage to the High Court, as they would have before them the opinions of two lower courts on the facts submitted to them. The course suggested by the Select Committee would undoubtedly mean a reflection on the ability and talent of our District Judges who, as a body, are men of great experience and capacity.

It appears to me undesirable to deny to one body of suitors the privilege of going to two courts, while another body enjoys that privilege. A relief to the Civil Courts should be so designed as not to deprive suitors of their existing privileges which they should be able to secure even at some greater cost of money and time. It cannot be said that it makes no difference whatever to a suitor, whether his case is adjudicated upon by a Munsiff or District Judge before it reaches the High Court.

I am afraid that, looking at the question as a matter of relief to the Civil Courts, the District Courts which are now heavily worked will come in for too much relief—surely an undesirable result; for I am informed that, under the Bill as amended by the Select Committee, the District Courts will have little or nothing of original suits, as a large proportion of the present suits in the District Courts is of the values between Rs. 500 and Rs. 1,000, and when the *small cause* jurisdiction of these courts is also raised as proposed, the relief will be even greater. Is this contemplated? I am further informed that the file of the heaviest District Courts will fall so low as 40 suits a year. Is the Council prepared for this?

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The Council will remember that the relief to the over-worked Munsiffs' Courts, to which reference was made in the speech of my learned friend the mover of the Bill, is left to be determined at a future date by the High Court and Government, as occasion may arise, by enhancing their small cause jurisdiction to Rs. 50. I need scarcely point out that the relief to the Munsiffs' Courts is a matter of *extreme* urgency and ought to receive our earliest attention.

Mr. Kunhiraman Nair.—I rise, Sir, to oppose the amendment. After what has fallen from the learned member in charge of the Bill at the opening of the discussion, I need not say much in support of the revised Bill beyond making a few general observations. The amendments made by the Select Committee in the Bill as originally introduced, except section 7 the rejection of which is now moved and of which I shall speak later on, have not been adversely criticised by the public so far as we can gather from the public press or communications received by the Council, and we may take it that the public generally are satisfied with the Bill as amended. The amendments have been made with the view of carrying out more fully the objects with which the Bill was originally introduced. These objects, I need hardly observe at this stage, are (1) to afford substantial relief to the over-worked District Judges who have, under present circumstances, in order to keep pace with the volume of work before them, to work incessantly and under high pressure, and to give them ample time to devote to important civil cases above Rs. 1,000 in value and to important miscellaneous work such as the work under the proposed Guardian and Wards Bill, besides original session work and other work on the criminal side including the revision of calendars and proceedings of the Sub-Magistrates, which latter work, if I am correctly informed, is not, for mere want of time, at present performed by some of the District Judges as thoroughly as they wish; (2) to save the public the trouble and expense involved in going to the comparatively distant District Court for prosecution of their original suits of the value of above Rs. 500 and below Rs. 1,000 in preference to the Munsiffs' Courts situated nearer home and equally competent to deal with these suits. The transfer to the Munsiffs from the District Judges of the original work in suits of above Rs. 500 and the provision for appeals in such suits being preferred to the High Court would tend to reduce substantially the civil work of the District Judges and has the merit of paving the way for adopting, in the near future, as far as circumstances permit, the system now prevailing in British India of the District Courts being ordinarily manned by a single judge. The original proposal of conferring enhanced jurisdiction in regular suits on selected Munsiffs, on the recommendation of the High Court from time to time, was not likely to afford relief to all the District Judges alike, and the amendment embodied in section 3, is, I may say, wholly in accordance with the proposal of the High Court who naturally consider that no invidious distinction between officers of equal literary and legal qualifications need be made in so far as regular suits, which are subject to appeal, are concerned.

As for the amendment made by section 7, all that I need say is that it does not embody any novel proposal, and that the section is drawn up on the lines of section 13 of the Madras Civil Courts Act, which provides for regular appeals from the decrees and orders of Subordinate Judges and District Munsiffs being made to the District Courts except when the amount or value of the subject-matter of the suit exceeds Rs. 5000, in which case the appeal is to be made to the High Court direct instead of the District Court, which is ordinarily the first appellate court from the decisions of subordinate courts in the district. Similar provisions for direct appeals to the High Court in cases of comparatively large value are found enacted in the Bengal, North-West Provinces, Assam and Bombay Civil Courts Acts, and the advantages of adopting the British Indian system are manifold. Besides relieving the District Judges of some portion of their civil work as already stated and thus enabling them to dispose of the other work before them with promptitude and despatch, the litigant public will be saved the trouble and expense of preferring two appeals successively before they can get a final adjudication of their cases, and the right now possessed by them, of getting a decision on facts in such cases from the High Court, composed of more than two judges, a right which, I believe, is highly valued by the public, will be preserved to them intact.

The present system of appeal is, in the opinion of a few eminent jurists, an evil and it may be said, so far as first appeals are concerned, that if it is an evil, it is a necessary evil with which we must put up if we are to consult the public interests, acting

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as it does as a safe-guard against any possible failure of justice. The system of double appeals stands on a somewhat different footing and is viewed with much disfavour by many a practical statesman in British India. A draft Bill for restricting the right of second appeal under the Civil Procedure Code has, I understand, been recently prepared by the Government of India and circulated to the several High Courts in British India for opinion, and though, as at present circumstanced, our Government may not, with due regard to the feelings and sentiments of the public, be in a position to restrict the right of second appeal now possessed by them, there is no reason why that right which has been condemned by several eminent authorities should be extended. Speaking of double appeals, the late Sir James Stephen, a late law-member of the Viceroy's Council, and afterwards a judge of the High Court of England, has thus observed in his minute on the "Administration of Justice in India." "Double appeals are attended by one special inconvenience, that of defeating what in this country is by far the most important of the objects for which appeals exist—that of keeping a check on the judges. If an efficient judge is subject to the supervision, by way of appeal, of a superior court, it is obvious that the chance that the appellate judge may be himself over-ruled by a High Court diminishes the force of the check on the inferior judge whilst the chance that the High Court may confirm the decision of the appellate judge does not in any way increase the stringency of the appellate judge's control." We, here, have, in the interests of the public and to prevent any possible mis-carriage of justice by wrong decision on facts, gone in advance of legislation in the Madras Presidency, and given the right of second appeal to the High Court from decisions in suits below Rs. 500, when the findings on facts of the District Court which is the first appellate Court differ from those of the Munsiff. Disputed facts are the most important thing to be decided in cases ordinarily coming before our courts for adjudication, and justice is, in many cases, better administered by a right decision on facts, though I am not to be understood as undervaluing the importance of questions of law, the proper application of which, however, depends upon the right solution of facts. Second appeals having already been allowed in all cases in which the interests of justice demanded such concession, it does not seem proper to create a right of second appeal in cases above Rs. 500 in which it does not at present exist. The objections argued against the provisions of section 7 are, I must say, wholly untenable. One of these objections, which I find stated in the only communication received on this subject from the outside public is, that the proposed change will be considered a slur on our District Judges. The answer to this is that the District Judges in British India do not view the system in such a light and we have no reasons for thinking that our District Judges, who are men of superior calibre too, would entertain a different view. None of the District Judges have sent any communication on the subject either to the High Court or, as far as I am aware, to the Government.

Another objection urged in the same communication is that "the Zillah Courts being nearer to the residence of parties, it will promote public convenience if the appeals are made to lie to the Zillah Court." The parties in appeal, however, need not dance attendance upon the Court for several days as in original suits, where trials are sometimes protracted and several stages have to be gone through before a decision can be made. The attendance of the parties in appeals need generally be only for one or two days, and the advantage of having cases decided by means of one appeal instead of two appeals, far out-weighs the slight inconvenience which in a few cases might be caused by the distance between the District Court and the High Court. The balance of convenience is in favour of the amendment made by the Select Committee which, as already stated, does not virtually involve any change and simply maintains the "*statu quo*" in the matter of regular appeals in suits of the value of above Rs. 500.

The amendment was put to the vote and was lost.

Mr. Thanu Pillai.—I beg to move that the Bill be read again on a future day of which notice shall be given.

The motion was put and agreed to.

The Council adjourned at 5-20 P. M.

K. KRISHNASWAMY RAO,
President.

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